

Representative Gage Froerer proposes the following substitute bill:

UNLAWFUL DETAINER AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gage Froerer

Senate Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill requires the court to hold an evidentiary hearing within ten days for an action involving unlawful detainer.

Highlighted Provisions:

This bill:

- requires the court, upon the request of either party, to hold an evidentiary hearing for an action involving unlawful detainer;

H→ ► exempts tenants from the treble damages provisions for unlawful detainer after a forced sale unless the tenant was given notice; [and] ←H

- adds occupying property after a forced sale to list of what constitutes unlawful detainer **H→ ; and**

- requires a 45-day notice, in addition to the 20-day notice required, to tenants of property to be sold at a forced sale ←H .**

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

H→ 57-1-24, as last amended by Laws of Utah 2001, Chapter 236 ←H

78B-6-802, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-6-810, as renumbered and amended by Laws of Utah 2008, Chapter 3

H→ 78B-6-811, as renumbered and amended by Laws of Utah 2008, Chapter 3 ←H



Be it enacted by the Legislature of the state of Utah:

↪ Section 1. Section 57-1-24 is amended to read:

57-1-24. Sale of trust property by trustee -- Notice of default.

The power of sale conferred upon the trustee who is qualified under Subsection 57-1-21(1)(a)(i) or (iv) may not be exercised until:

(1) (a) the trustee first files for record, in the office of the recorder of each county where the trust property or some part or parcel of the trust property is situated, a notice of default, identifying :

(i) the trust deed by stating the name of the trustor named in the trust deed [~~and giving~~] ;

(ii) the book and page, or the recorder's entry number, where the trust deed is recorded [~~and~~]

(iii) a legal description of the trust property [~~, and containing~~] ;

(iv) a statement that a breach of an obligation for which the trust property was conveyed as security has occurred [~~;~~] ; and [~~setting forth~~]

(v) the nature of that breach and of the trustee's election to sell or cause to be sold the property to satisfy the obligation;

(b) the trustee has given written notice of the default on all residential properties with fewer than nine individual units:

(i) within 45 days of the date the trustee first files the notice of default for record;

(ii) on the primary door of, if a multi-tenant residence, the primary doors of the property to be sold; and

(iii) in substantially the following form:

"Notice of Default

The following described property is in default and, if not remedied, will be sold at public auction to the highest bidder for the purpose of foreclosing a trust deed originally executed by

_____ (and _____) as trustors, in favor of _____, covering real property located at

_____, and more particularly described as: (insert legal description)

A notice of sale of the property will be provided a minimum of 20 days before the public auction.

The current beneficiary of the trust deed is _____ and the record owners of the property as of the recording of the notice of default are _____ and _____.

Dated _____

Trustee _____"; and

(c) including, at the option of the trustee, information on the reverse side of the notice regarding foreclosure mitigation;

(2) not less than three months has elapsed from the time the trustee filed for record under Subsection (1); and

(3) after the lapse of at least three months the trustee shall give notice of sale as provided in

Sections 57-1-25 and 57-1-26. **↩**

Section ~~H~~→ [1] 2 ←~~H~~ . Section 78B-6-802 is amended to read:

78B-6-802. Unlawful detainer by tenant.

(1) A tenant holding real property for a term less than life, is guilty of an unlawful detainer if the tenant:

(a) continues in possession, in person or by subtenant, of the property or any part of it, after the expiration of the specified term or period for which it is let to him, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period;

(b) having leased real property for an indefinite time with monthly or other periodic rent reserved:

(i) continues in possession of it in person or by subtenant after the end of any month or period, in cases where the owner, the owner's designated agent, or any successor in estate of the owner, 15 calendar days or more prior to the end of that month or period, has served notice requiring the tenant to quit the premises at the expiration of that month or period; or

(ii) in cases of tenancies at will, remains in possession of the premises after the expiration of a notice of not less than five calendar days;

(c) continues in possession, in person or by subtenant, after default in the payment of any rent or other amounts due and after a notice in writing requiring in the alternative the payment of the rent and other amounts due or the surrender of the detained premises, has remained uncomplied with for a period of three calendar days after service, which notice may be served at any time after the rent becomes due;

(d) assigns or sublets the leased premises contrary to the covenants of the lease, or commits or permits waste on the premises;

(e) sets up or carries on any unlawful business on or in the premises;

(f) suffers, permits, or maintains on or about the premises any nuisance, including nuisance as defined in Section 78B-6-1107;

(g) commits a criminal act on the premises and remains in possession after service of a three calendar days' notice to quit; ~~or~~

(h) continues in possession, in person or by subtenant, after a neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held,

other than those previously mentioned, and after notice in writing requiring in the alternative the performance of the conditions or covenant or the surrender of the property, served upon the tenant and upon any subtenant in actual occupation of the premises remains uncomplished with for three calendar days after service[-]; or

(i) continues to occupy the property after a forced sale of a trust deed or mortgage where the trustor or mortgagor has defaulted on his or her obligations resulting in disposition of the property by a trustee's sale or sheriff's sale.

(2) Within three calendar days after the service of the notice, the tenant, any subtenant in actual occupation of the premises, any mortgagee of the term, or other person interested in its continuance may perform the condition or covenant and thereby save the lease from forfeiture, except that if the covenants and conditions of the lease violated by the lessee cannot afterwards be performed, or the violation cannot be brought into compliance, the notice provided for in Subsections (1)(d) through (g) may be given.

(3) Unlawful detainer by an owner resident of a mobile home is determined under Title 57, Chapter 16, Mobile Home Park Residency Act.

(4) The notice provisions for nuisance in Subsections (1)(d) through (g) do not apply to nuisance actions provided in Sections 78B-6-1107 through 78B-6-1114.

Section ~~H~~→ [2] 3 ←~~H~~ . Section **78B-6-810** is amended to read:

78B-6-810. Court procedures.

(1) In an action under this chapter in which the tenant remains in possession of the property:

(a) the court shall expedite the proceedings, including the resolution of motions and trial;

(b) the court shall begin the trial within 60 days after the day on which the complaint is served, unless the parties agree otherwise; and

(c) if this chapter requires a hearing to be held within a specified time, the time may be extended to the first date thereafter on which a judge is available to hear the case in a jurisdiction in which a judge is not always available.

(2) (a) In an action for unlawful detainer ~~H~~→ [F] **where the claim is for nonpayment of rent [F] or for occupancy of a property after a forced sale as described in**

78B-6-802(1)(i) ←H ,

the court shall hold an evidentiary hearing, upon request of either party, within ten days after the day on which the defendant files the defendant's answer.

(b) At the evidentiary hearing held in accordance with Subsection (2)(a):

(i) the court shall determine who has the right of occupancy during the litigation's pendency; and

(ii) if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.

(3) (a) In an action for unlawful detainer in which the claim is for nuisance and alleges an act that would be considered criminal under the laws of this state, the court shall hold an evidentiary hearing within ten days after the day on which the complaint is filed to determine whether the alleged act occurred.

(b) The hearing required by Subsection (3)(a) shall be set at the time the complaint is filed and notice of the hearing shall be served upon the defendant with the summons at least three calendar days before the scheduled time of the hearing.

(c) If the court, at an evidentiary hearing held in accordance with Subsection (3)(a), determines that it is more likely than not that the alleged act occurred, the court shall issue an order of restitution.

(d) If an order of restitution is issued in accordance with Subsection (3)(c), a constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

(e) The court may allow a period of up to 72 hours before restitution may be made under Subsection (3)(d) if the court determines the time is appropriate under the circumstances.

(f) At the evidentiary hearing held in accordance with Subsection (3)(a), if the court determines that all issues between the parties can be adjudicated without further proceedings, the court shall adjudicate those issues and enter judgment on the merits.

(g) "An act that would be considered criminal under the laws of this state" under Subsection (3)(a) includes only the following:

(i) an act that would be considered a felony under the laws of this state;

(ii) an act that would be considered criminal affecting the health or safety of a tenant, the landlord, the landlord's agent, or other person on the landlord's property;

(iii) an act that would be considered criminal that causes damage or loss to any tenant's property or the landlord's property;

(iv) a drug- or gang-related act that would be considered criminal;
(v) an act or threat of violence against any tenant or other person on the premises, or against the landlord or the landlord's agent; and

(vi) any other act that would be considered criminal that the court determines directly impacts the peaceful enjoyment of the premises by any tenant.

(4) (a) At any hearing held in accordance with this chapter in which the tenant after receiving notice fails to appear, the court shall issue an order of restitution.

(b) If an order of restitution is issued in accordance with Subsection (4)(a), a constable or the sheriff of the county where the property is situated shall return possession of the property to the plaintiff immediately.

(5) A court adjudicating matters under this chapter may make other orders as are appropriate and proper.

H→ Section [3] 4 . Section 78B-6-811 is amended to read:

78B-6-811. Judgment for restitution, damages, and rent -- Immediate enforcement -- Treble damages.

(1) (a) A judgment may be entered upon the merits or upon default.

(b) A judgment entered in favor of the plaintiff shall include an order for the restitution of the premises as provided in Section 78B-6-812.

(c) If the proceeding is for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease or agreement.

(d) (i) A forfeiture under Subsection (1)(c) does not release a defendant from any obligation for payments on a lease for the remainder of the lease's term.

(ii) Subsection (1)(d)(i) does not change any obligation on either party to mitigate damages.

(2) The jury or the court, if the proceeding is tried without a jury or upon the defendant's default, shall also assess the damages resulting to the plaintiff from any of the following:

(a) forcible entry;

(b) forcible or unlawful detainer;

(c) waste of the premises during the defendant's tenancy, if waste is alleged in the complaint and proved at trial;

(d) the amounts due under the contract, if the alleged unlawful detainer is after default in the payment of amounts due under the contract; and

(e) the abatement of the nuisance by eviction as provided in Sections 78B-6-1107 through 78B-6-1114.

(3) (a) The judgment shall be entered against the defendant for the rent, for three times the amount of the damages assessed under Subsections (2)(a) through (2)(e), and for reasonable

130y attorney fees.

130z **(b) If the proceeding is for unlawful detainer, damages in Subsection (a) may not be**
130aa **entered against the defendant if the plaintiff acquired the property in a forced sale, unless the**
130ab **defendant was given notice of the sale and notice to quit, and proof of both notices is provided**
130ac **to the court.**

130ad **(4) (a) If the proceeding is for unlawful detainer, execution upon the judgment shall be issued**
130ae **immediately after the entry of the judgment.**

130af **(b) In all cases, the judgment may be issued and enforced immediately. ←H**

H.B. 299 1st Sub. (Buff) - Unlawful Detainer Amendments - As Amended

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations. If enacted, this bill may impact certain Courts' caseloads, however the impact is unquantifiable at this time.

Individual, Business and/or Local Impact

Enactment of this bill may impact certain individuals in eviction cases.
